



STATE OF INDIANA

ERIC J. HOLCOMB, Governor

PUBLIC ACCESS COUNSELOR
LUKE H. BRITT

Indiana Government Center South
402 West Washington Street, Room W470
Indianapolis, Indiana 46204-2745
Telephone: (317)234-0906
Fax: (317)233-3091
1-800-228-6013
www.IN.gov/pac

August 1, 2019

Bob Segall
WTHR
Via email

Re: Informal Opinion; 19-INF-11;

Dear Mr. Segall:

This memorandum is in response to your request for an advisory on the issue of legal services invoices of a local school corporation. Your question initially took the form of a formal complaint, however, after some discussion, it was converted to an informal inquiry due to certain nuances in the case.

BACKGROUND

On October 12, 2018, you submitted an Access to Public Records Act ("APRA") request to Hamilton Southeastern Schools ("HSE"). You sought approximately ten months' worth of legal invoices regarding the HSE's handling of an employee's discipline. This matter has also been addressed in *Opinions of the Public Access Counselor* 17-FC-09; 17-FC-81; 17-FC-275 & 18-FC-45. As of the filing of your formal complaint, submitted on March 20, 2019, it was determined that an adversarial complaint was considered untimely by this Office. It was subsequently converted to an informal inquiry in June 2019.

While that inquiry was pending, you did receive a response from HSE on July 17, 2019. The legal invoices you requested were heavily redacted, similar to prior responses. You raise issues of timeliness and over-redaction in your inquiry. Pursuant to Indiana code section 5-14-4-10, I issue the following Opinion.

PUBLIC AGENCY LEGAL INVOICES

This Office's definitive statement on public agency legal invoices can be found at *Opinion of the Public Access Counselor 18-FC-34*. This Opinion also involves the same law firm utilized by HSE schools and it can be safely presumed it is aware of the Public Access Counselor's take on these matters. With mindfulness toward undue repetition, that Opinion is enclosed and incorporated by reference.

Opinion of the Public Access Counselor 18-FC-34 can be summarized as follows: a law firm representing a public agency is a service provider no different than a food vendor or paving contractor in terms of the accounting of public funds. Just as the public has an unequivocal right to know how much a school pays the school janitor, so too does the public have the right to know how much it pays its lawyers.

The presumption of any public record is that it is absolutely disclosable unless there is a statute limiting the disclosure information contained therein. And while public agencies owe a certain duty to private service providers to keep a limited amount of information in-house, those exemptions to disclosure are to be exercised strictly and conservatively.¹ Similarly, it is not lost on the Public Access Counselor – who is statutorily required to be an active member of the Indiana bar – that attorney-client privileged information is one of those exemptions.

That written, the Indiana General Assembly considers the American constitutional form of representative government to be predicated on notions of transparency and accountability.² Good civil service is not consistent with obscurity, obfuscation and opacity. Therefore any exemptions to disclosure should not be used as a shield to render an otherwise disclosable document incomprehensible.

The public should be able to scrutinize bills, invoices and receipts to decide whether its elected officials are acting as good stewards of the resources entrusted to them. Using those types of documents as a vehicle for non-disclosable information – thus rendering the entire document unreadable – is, at best, in direct tension with the General Assembly's intent.

In *Opinion of the Public Access Counselor 18-FC-34*, the public agency subject to that complaint took some small steps to de-mystify, to a certain extent, its legal invoices. That is not the case in the current instance. HSE's legal invoices are an impenetrable monolith of black ink. This issue has not reared its head in some amount of months (the invoices in question were prior to the issuance of 18-FC-34), therefore it is the sincere hope of this Office that certain practices have been amended to reflect these considerations. If not, it is foreseeable that any future complaints will result in a finding of non-compliance.

¹ *Knightstown Banner v. Town of Knightstown*, 838 N.E.2d 1127 (Ind. Ct. App. 2005)

² Ind. Code § 5-14-3-1

TIMELINESS

Therefore, while this Opinion can only reiterate criticism of past practices when it comes to redactions, it can seek to address the nine months it took HSE to produce approximately ten pages of material. Indiana Code requires public records to be provided within a reasonable time of the request.³

Inarguably, if your formal complaint was indeed timely and filed within 30 days of a constructive denial,⁴ it would have been considered a violation of the Access to Public Records Act. It is doubtful that HSE would have carried its burden of demonstrating extenuating circumstances of which justifies taking such an extraordinary time for such a small amount of material.

Please do not hesitate to contact me with any questions.

Best regards,



Luke H. Britt
Public Access Counselor

³ Ind. Code § 5-14-3-3(b)

⁴ Ind. Code § 5-14-5-7